

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57562; File No. SR-Amex-2008-26)

March 26, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Elimination of the Options Marketing Fee Related to P/A Orders that are Routed Via the Options Linkage for Execution on an Away Options Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 19, 2008, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Amex under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate the options marketing fee related to principal acting as agent (“P/A”) orders that are routed via the Options Linkage for execution on an away options exchange. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.amex.com](http://www.amex.com).

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to eliminate the options marketing fee related to P/A Orders that are routed via the Options Linkage for execution on an away options exchange. A P/A Order is an order for the principal account of a specialist reflecting the terms of a related unexecuted public customer order for which the specialist is acting as agent. The Exchange believes that specialists, registered options traders ("ROTs"), and supplemental registered options traders ("SROTs") should not be subject to the options marketing fee for P/A Orders that are executed on an away options exchange.

The options marketing fee is collected on those specialist, ROT, and SROT transactions involving electronically executed customer orders from firms accepting payment for directing their orders to the Exchange. The Exchange believes that, accordingly, the purpose of the options marketing fee is to provide incentives for an order flow provider to send customer order flow to the Amex.

The Exchange states that if a specialist, ROT or SROT has negotiated a payment to a firm of less than the marketing fee, the difference between the marketing fee and the actual

payment is refunded to the specialist, ROT and SROT. The options marketing fee is also not charged on transactions between and among ROTs and specialists.

The current options marketing fee, on a per contract side basis, is set forth below.

	Specialist and Registered Options Trader (ROT)	Supplemental Registered Options Trader (SROT)
Equity Options	\$0.75 or \$0.35 or \$0.40*	\$0.75 or \$0.35*
Exchange-Traded Fund Share Options (including QQQQ Options and excluding SPY Options*)	\$0.75 or \$0.35 or \$0.40*	\$0.75 or \$0.35*
SPY Options	\$1.00 or \$0.40*	\$1.00
Trust Issued Receipt (HOLDR) Options	\$0.75 or \$0.35 or \$0.40*	\$0.75 or \$0.35*
Index Options (including MNX Options and excluding NDX and RUT Options)	No Charge	No Charge

\* The \$0.35 options marketing fee applies to those series of Equity Options, Exchange Traded Fund Share Options, and Trust Issued Receipt Options that quote and trade in one cent increments under the penny pilot program. The \$0.40 options marketing fee applies to those series of Equity Options, Exchange Traded Fund Share Options (including SPY Options), Trust Issued Receipt Options, and NDX and RUT Options that are manually executed customer orders of 1,000 contracts or greater.

The Exchange states that the purpose of this proposal is to eliminate the options marketing fees for specialists, ROTs, and SROTs in those cases where an underlying customer order through a P/A Order is routed to an away exchange as required by the Options Linkage Plan and the related rules of the Exchange. In such an instance, the Exchange believes that the purpose for imposing the options marketing fee does not exist.

The Exchange believes that this proposal to eliminate the options marketing fee for P/A Orders that are routed via the Options Linkage to an away options exchange for execution is necessary so that specialists, ROTs, and SROTs are not paying an options marketing fee for orders that are not executed on the Exchange.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general, and Section 6(b)(4) of the Act<sup>6</sup> in particular, in that it is designed to provide for an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using exchange facilities.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and Rule 19b-4(f)(2)<sup>8</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2008-26 on the subject line.

#### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2008-26. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2008-26 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).